

APPEAL NO. 040873
FILED JUNE 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 9, 2004. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include a pars defect at L5 and a Grade I slippage of L5 on S1; that the claimant did not have disability, as a result of his _____, compensable injury, from March 18, 2003, through the date of the hearing; and that Dr. B was not properly appointed as the designated doctor in accordance with Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5). In his appeal, the claimant argues that the hearing officer's extent-of-injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the determination that Dr. B was not properly appointed as the designated doctor and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not include a pars defect at L5 and a Grade I slippage of L5 on S1, and that the claimant did not have disability, as a result of the compensable injury, from March 18, 2003, through the date of the hearing. The claimant had the burden of proof on those issues and they presented questions of fact for the hearing officer. There was conflicting evidence presented on the disputed issues. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained his burden of proving that the compensable injury extended to the pars defect at L5 and the Grade I slippage of L5 on S1, or that he had disability for the period from March 18, 2003, through the date of the hearing. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record reveals that the challenged determinations are so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge